

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

December 6, 2002

IN RE:

COMPLAINT OF MR. MICHAEL
VAN WIES AGAINST CENTURYTEL
OF OOLTEWAH-COLLEGEDALE

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DOCKET NO.
02-00058

TR REGULATORY AUTHORITY
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**ORDER GRANTING IN PART AND DENYING IN PART CENTURYTEL'S MOTION
TO COMPEL, GRANTING IN PART AND DENYING IN PART MR. VAN WIES'S
MOTION TO COMPEL, AND SETTING FORTH GUIDELINES FOR HEARING**

This matter is before the Hearing Officer on a *Motion to Compel* ("CenturyTel's *Motion*") filed by CenturyTel of Ooltewah-Collegedale, Inc. ("CenturyTel") and a *Motion to Compel* ("Mr. Van Wies's *Motion*") filed by Mr. Michael Van Wies. As explained further below, the Hearing Officer grants in part and denies in part CenturyTel's *Motion* and Mr. Van Wies's *Motion*. The Hearing Officer finds that in some instances responses to discovery requests have been insufficient. The Hearing Officer finds, however, that the resolution of this case need not be further delayed over discovery disputes. Accordingly, this matter may proceed to a Hearing on the merits, and this Order sets forth guidelines for a Hearing. This Order also provides opportunities for the parties to supplement their responses and, in some instances, imposes restrictions on the parties in the event they do not supplement their responses.

Background

On January 15, 2002, Mr. Michael Van Wies filed a formal complaint (the "*Complaint*") against CenturyTel. The *Complaint* is contained in a letter to the Authority's Executive Secretary.¹ A cover sheet accompanying the *Complaint* entitled the action:

PETITION TO PERMANENTLY REVOKE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE A TELECOMMUNICATIONS COMPANY & RELATED SERVICES FOR CENTURYTEL OF OOLTEWAH-COLLEGEDALE, INC. DBA CENTURYTEL CORPORATION, INC., LLC, 100 CENTURYTEL DRIVE MONROE, LA 71203, 318-388-9000.²

In a general discussion of CenturyTel, Mr. Van Wies states in his *Complaint*:

We are tired of dealing with a company that does not want to do business here anymore. We have spoken with their executive, engineering, sales, regulatory, legal and marketing folks over the last two years to fix the problems, which affect the quality of life, and the aiding of the disabled in our community. The result is always the same—go take a walk, we have the monopoly here and that's the way it will be.³

The *Complaint* then lists nine (9) bulleted grievances.⁴ The *Complaint* concludes:

It boils down to this. Everywhere that CenturyTel runs a service area, they nickel and dime their business and residential customers to death. Cutting corners for the sake of the stockholder at the customers' expense is playing with peoples' lives businesses, schools, medical offices, etc. CenturyTel is giving a visible signal that they do not want to provide telecommunications services here in our area anymore. We invite them to formulate a business plan, and let BellSouth or another Provider, perhaps Sprint local, to come in here and serve the now bustling cities of Chattanooga, Collegedale, and the towns of Ooltewah, and Apison.⁵

On February 22, 2002, CenturyTel filed a *Motion to Dismiss*, which addressed each of Mr. Van Wies's grievances and asserted that his *Complaint* should be dismissed because (1) it fails to state a claim upon which relief may be granted, (2) CenturyTel may not transfer or

¹ The position of Executive Secretary of the Tennessee Regulatory Authority was eliminated by the Tennessee General Assembly, effective July 1, 2002. See 2002 Tenn. Pub. Acts, c. 826, § 6, repealing Tenn. Code Ann. § 65-1-209 in its entirety.

² *Complaint*, January 15, 2002, Cover Sheet.

³ *Complaint*, January 15, 2002, p. 1.

⁴ *Id.*, pp. 2-3.

⁵ *Id.*, p. 3.

abandon its certificate of public convenience and necessity ("CCN"), and (3) CenturyTel serves its Ooltewah customers well.

It is the Hearing Officer's intention to resolve CenturyTel's *Motion to Dismiss* in the course of a Hearing on the merits. As discussed in detail below, Mr. Van Wies, in a letter filed on June 24, 2002, has withdrawn all but one of his claims against CenturyTel.⁶

Mr. Van Wies, in a letter to the Executive Secretary dated March 1, 2002, made the following discovery requests:

In specific for items #1, & 2, we want CenturyTel to provide for the Tennessee Regulatory Authority the date that the "RECENT CHANGE MESSAGES" were input to their DMS-100 switch to activate these features for public use basis.

In regard to item #6, we want CenturyTel to provide the Tennessee Regulatory Authority, with "TRUNK OVERFLOW DATA FOR THE CHATTANOOGA TANDEM TRUNK GROUP", during PEAK TRAFFIC PERIODS. CenturyTel has stated that they have not experienced any recent trunk blockages, which violate TRA call completion rate standards, this would imply that they have violated these standards in the past. As per TRA Rule 1220-4-2-.34(4) (requiring quarterly formal reports and ADDITIONAL REPORTS WHEN SURVEILLANCE REVEALS SERVICE PROBLEMS). We want CenturyTel to produce for us, the DMS-100 switch data used to compile the quarterly report for THIRD QUARTER (JULY, AUGUST & SEPTEMBER) 2001, and a copy of the corresponding report as provided to the TRA. My experience during this period was an abnormally high call failure rate. I would also like data as to when and if any additional reports were filed due to service problems.⁷

Pursuant to a status conference held on May 16, 2002, the Hearing Officer issued an *Order Establishing Procedural Schedule* on May 22, 2002. This Order set a deadline of May 24, 2002 for service and filing of all discovery requests. On May 24, 2002, CenturyTel filed a *Request for Discovery from CenturyTel to Michael Van Wies*, which contains thirteen (13)

⁶ The single remaining claim is stated on page 2 of the *Complaint* and quoted in CenturyTel's *Motion to Dismiss* at page 5. This claim is as follows:

Also the reason for getting the FX line in a residence is that CenturyTel does not have enough trunks. Certain times of the day and on weekends you can't even complete calls into the City of Chattanooga Tandem. So we bear an additional expense, and let CenturyTel control my family's local and long distance calling pattern. So now we by-pass their local DMS-100 switch, and get BellSouth dial tone in my home. We call when and where we want to without interference.

Complaint, January 15, 2002, p. 5; *Motion to Dismiss*, February 22, 2002, p. 5.

⁷ Letter/Discovery Requests from Michael Van Wies to K. David Waddell, March 1, 2002, pp. 1-2.

interrogatories, eleven (11) requests for admissions, and ten (10) requests for production of documents.

On May 28, 2002, CenturyTel filed its *Response to Van Wies Motion for Discovery*. This filing includes the following response to part of Mr. Van Wies's March 1, 2002 discovery request:

Response to Request 2: CenturyTel responds specifically to each subpart of Request 2 as follows: (a) CenturyTel objects to this request as vague, over-broad and unduly burdensome. This request would require the production of voluminous raw trunk data over an unspecified period of time. However, notwithstanding this objection, CenturyTel confirms that no trunk blockages or service problems have occurred during any of the times alleged by Mr. Van Wies, nor is CenturyTel aware of any trunk blockage problems prior to the dates that Mr. Van Wies alleged that trunk blockage problems occurred. (b) A copy of the information provided to the TRA for the Third Quarter 2001 is attached as Appendix B to this response. Appendix B also includes the information (and cover letters) provided to the TRA for the First, Second, and Fourth Quarters of 2001. The data upon which the Third Quarter report is based no longer exists. Due to the voluminous nature of such data, it was automatically purged from the CenturyTel system on a regular basis. On the date that Mr. Van Wies's discovery request was received by CenturyTel, no data from prior to October 2001 still existed. (c) No additional TRA reports have been filed with the TRA due to service problems since no such reports have been warranted.⁸

Mr. Van Wies's *Response of Michael Van Wies to Request for Discovery from CenturyTel*, dated June 12, 2002, was received by the Authority on June 17, 2002. On June 14, 2002, CenturyTel filed a letter to Mr. Van Wies regarding his June 12, 2002 *Response*. In this letter, CenturyTel stated that it "considers your current response incomplete and evasive," and CenturyTel requests that Mr. Van Wies "provide us with a full, complete, sworn response to our Discovery Request, including complete, responsive, answers to each of our interrogatories and requests for production without delay."⁹ This June 14, 2002 letter will be treated as an adjunct to CenturyTel's *Motion*.

⁸ *Response to Van Wies Motion for Discovery*, May 28, 2002, pp. 3-4.

⁹ Letter from Ross Booher to Michael Van Wies, June 14, 2002, p. 1.

CenturyTel's Motion to Compel

CenturyTel filed its *Motion to Compel* on June 19, 2002. In the *Motion*, CenturyTel

moves to compel Petitioner Michael Van Wies ("Petitioner") to immediately, fully, and completely respond under oath to the written discovery that was propounded to him on May 24, 2002, and to tax the cost of this motion (including attorney's fees) against Petitioner pursuant to Tenn. R. Civ. P. 37.01(2) and 37.02.¹⁰

CenturyTel also requests a postponement of further deadlines until Mr. Van Wies provides complete responses or, in the alternative, an order dismissing Mr. Van Wies's *Complaint* with prejudice. CenturyTel's *Motion* details various instances of delay or non-response on Mr. Van Wies's part. CenturyTel's *Motion* states that as a result of Mr. Van Wies's failure to respond properly to its discovery requests, "CenturyTel lacks critical information regarding Petitioner's claims which prejudices CenturyTel's ability to prepare its case."¹¹ CenturyTel adds, "[f]or example, CenturyTel still does not know which claims Petitioner intends to pursue before the TRA . . ."¹² Each of the discovery requests propounded by CenturyTel in its May 24, 2002 *Request for Discovery* will now be considered in turn.

Interrogatory No. 1: CenturyTel asks for clarification of Mr. Van Wies's use of the terms "we," "the community," and "some customers," and other terms, as CenturyTel puts it, "suggesting anyone other than Micheal [sic] Van Wies."¹³ The Hearing Officer finds that Mr. Van Wies sufficiently responded to this interrogatory in his June 12, 2002 *Response*, provided that Mr. Van Wies shall not use such terms in a manner inconsistent with the June 12, 2002

¹⁰ CenturyTel's *Motion to Compel*, June 19, 2002, p. 1.

¹¹ *Id.*, p. 4.

¹² *Id.*

¹³ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 7.

Response.

Interrogatory No. 2: CenturyTel asks Mr. Van Wies to identify every claim he still intends to pursue against CenturyTel, using the paragraph numbers used in its *Motion*.¹⁴ Mr. Van Wies sufficiently responded to this interrogatory in his June 30, 2002 letter, in which he stated that he was pursuing only claim No. 6.

Interrogatory No. 3: CenturyTel asks Mr. Van Wies to identify the supporting facts, witnesses, documents or evidence, and legal authority for “each and every claim” he intends to pursue.¹⁵ The Hearing Officer finds that Mr. Van Wies has hardly provided a direct, straightforward response to this interrogatory. However, Mr. Van Wies’s response or lack thereof must be viewed in light of his statement that he is limiting his complaint to claim No. 6 as well as CenturyTel’s own response to his discovery request, which would tend to limit the information Mr. Van Wies could provide to support his position as to claim No. 6. The Hearing Officer determines that it will be sufficient for Mr. Van Wies to identify information that is responsive to this interrogatory and present testimony regarding such information at a Hearing on the merits. If it appears that Mr. Van Wies has unnecessarily refused to provide relevant information, he will not be allowed to present testimony regarding the unnecessarily concealed information at the Hearing. As explained below, the Hearing will be strictly limited to claim No. 6.

Interrogatory No. 4: CenturyTel asks Mr. Van Wies to identify all persons not already identified who have knowledge of facts related to his claims.¹⁶ In his June 12, 2002 *Response*, Mr. Van Wies did not clearly respond to this interrogatory under the heading of No. 4. In his

¹⁴ *Id.*

¹⁵ *Id.*, p. 8.

¹⁶ *Id.*

response to Interrogatory No. 1, however, Mr. Van Wies identified five (5) persons.¹⁷ It may be that these persons have knowledge related to Mr. Van Wies's remaining claim. Mr. Van Wies may call any of these five (5) persons as witnesses at the Hearing, provided that their testimony is limited to claim No. 6. Mr. Van Wies shall identify through the testimony of each witness the purpose of calling the witness and establish what knowledge the witness has regarding his remaining claim.

Interrogatory No. 5: CenturyTel asks Mr. Van Wies to describe his education and experience in the telecommunications industry, state the reasons for his "separation from employment," and identify his supervisor(s).¹⁸ CenturyTel contends that Mr. Van Wies "only partially answered this interrogatory," stating that he "failed to identify [his] immediate supervisor(s)."¹⁹ The Hearing Officer finds that Mr. Van Wies adequately responded to this interrogatory in his June 12, 2002 *Response*.

Interrogatory No. 6: CenturyTel asks Mr. Van Wies to "set forth every instance within the last ten years in which you have sought and been denied employment or a position in the telecommunications, cable, TV, internet or utilities industries" and to provide information related to such attempts.²⁰ In his June 12, 2002 *Response*, Mr. Van Wies objects to this interrogatory "on the grounds that it is overly broad, unduly burdensome, not calculated to lead to discovery of admissible evidence."²¹ CenturyTel insists that Mr. Van Wies respond to this interrogatory, asserting that "the information sought is relevant, among other reasons, to determining your plan, motive and intent with regard to your actions against CenturyTel."²²

The Hearing Officer reminds both parties that this is a consumer complaint before the

¹⁷ These persons are Christine Peters, Jerry Westmoreland, Wanda Westmoreland, Carl Furtney, and Mary Furtney. See *Response of Michael Van Wies to Request for Discovery from CenturyTel*, June 12, 2002, p. 1.

¹⁸ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 9.

¹⁹ Letter from Ross Booher to Michael Van Wies, June 14, 2002, p. 2.

²⁰ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 9.

²¹ *Response of Michael Van Wies to Request for Discovery from CenturyTel*, June 12, 2002, p. 3.

²² Letter from Ross Booher to Michael Van Wies, June 14, 2002, p. 2.

Authority. In bringing such a complaint, a utility customer's only obligation is to support a claim that his utility provider is providing inadequate service, as defined by the Authority's Rules. No further motive or intent is required. This interrogatory seeks information that is irrelevant to the remaining claim in this matter. Mr. Van Wies's objection is upheld.

Interrogatory No. 7: This interrogatory asks Mr. Van Wies to identify his expert witness(es) and to provide information regarding such witness(es).²³ In his June 12, 2002 *Response*, Mr. Van Wies identified John Russell of JMR Technical Services as his expert witness. Mr. Van Wies states that "Subparagraphs A-F," in which CenturyTel asks for information regarding the expert's background, "are not applicable in this matter."²⁴ The Hearing Officer finds that Mr. Van Wies has not responded adequately to this interrogatory. If Mr. Van Wies intends to call Mr. Russell as a witness at the hearing, Mr. Van Wies must respond fully to this interrogatory within fifteen (15) days from the date of this Order. Mr. Van Wies shall file such response with the Authority and serve the response upon CenturyTel. If no response is made, or the response does not fully provide the information sought in this interrogatory, Mr. Van Wies may be limited or prevented in his ability to call Mr. Russell as an expert witness at the Hearing.

Interrogatory No. 8: Mr. Van Wies is asked to identify "every instance within the last three years in which you have communicated a complaint, grievance, problem or concern to or about a provider of telecommunications, cable, TV, internet or utilities services . . ."²⁵ He is also asked to provide information related to each such complaint. In his June 12, 2002 *Response*, Mr. Van Wies objects on the same grounds as his objection with regard to Interrogatory No. 6.²⁶

²³ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, pp. 10-11.

²⁴ *Response of Michael Van Wies to Request for Discovery from CenturyTel*, June 12, 2002, p. 3.

²⁵ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, pp. 11-12.

²⁶ *Response of Michael Van Wies to Request for Discovery from CenturyTel*, June 12, 2002, p. 3.

CenturyTel also makes the same assertion as to “plan, motive and intent.”²⁷ The Hearing Officer finds, as with Interrogatory No. 6, that this interrogatory seeks irrelevant information, and Mr. Van Wies is not required to respond to it.

Interrogatory No. 9: CenturyTel asks Mr. Van Wies to set forth “every instance in which you have communicated a concern, grievance, or complaint to CenturyTel about a service provided to you by CenturyTel in which CenturyTel has not provided you a satisfactory response and, where needed, appropriate action” and, in subparts A through G, to provide information regarding each such complaint.²⁸ In his June 12, 2002 *Response*, Mr. Van Wies states: “A-G all files and relative data have been given to the TRA, and is already posted on their website.”²⁹ CenturyTel asserts that this response is not detailed enough and requests further detail.³⁰ The Hearing Officer finds that this interrogatory seeks information that is irrelevant and Mr. Van Wies is not required to respond to it.

Interrogatory No. 10: CenturyTel appears to consider this interrogatory sufficiently answered.

Interrogatory No. 11: CenturyTel asks Mr. Van Wies to elaborate on a statement in his *Complaint* to the effect that he had contacted “26 or so telecommunications companies” about matters related to the *Complaint* and to provide information regarding each such contact.³¹ In his June 12, 2002 *Response*, Mr. Van Wies refers to a list of telecommunications service providers attached to the *Response*. The Hearing Officer finds Mr. Van Wies’s answer to be deficient. Since this interrogatory derives from an off-hand comment in the *Complaint*, it is difficult to determine its importance, particularly in light of Mr. Van Wies’s having limited his

²⁷ Letter from Ross Booher to Michael Van Wies, June 14, 2002, p. 3.

²⁸ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 12.

²⁹ *Response of Michael Van Wies to Request for Discovery from CenturyTel*, June 12, 2002, p. 3.

³⁰ Letter from Ross Booher to Michael Van Wies, June 14, 2002, p. 3.

³¹ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 13.

claims to claim No. 6. Mr. Van Wies's contacts with other telecommunications providers regarding his claim appear to be irrelevant to his remaining claim against CenturyTel, and the Hearing Officer will treat it as such. Nevertheless, should Mr. Van Wies decide that information regarding the contacts is vital to his remaining claim, he is directed to respond fully to this interrogatory within fifteen (15) days from the entry of this Order. If Mr. Van Wies does not fully respond to this interrogatory, he will not be permitted to introduce testimony regarding such contacts at the Hearing.

Interrogatory No. 12: This interrogatory asks whether Mr. Van Wies is "physically challenged, disabled, sick, injured, or elderly."³² Mr. Van Wies's answer in his June 12, 2002 *Response* is "N/A,"³³ which CenturyTel calls "completely non-responsive."³⁴ In his June 23, 2002 letter, Mr. Van Wies states that he is not disabled.³⁵ This interrogatory has been fully answered. The only reason the Hearing Officer can see for this interrogatory is the statement in the *Complaint* that "[y]ou can not get access to repeat dialing feature by dialing *66 or 1166 on a pay-per-use basis, even if you are physically challenged, disabled, sick, injured, or elderly."³⁶ Even with this statement, it is difficult to find a justification for this interrogatory.

Interrogatory No. 13: CenturyTel asks Mr. Van Wies to support any denials in response to CenturyTel's eleven (11) requests for admissions, which follow the interrogatories.³⁷ In his June 12, 2002 *Response*, Mr. Van Wies admitted Request Nos. 1 and 2 and denied the remainder. CenturyTel objects to his not having supported these denials.

The nine (9) denied requests are as follows:

- (3) After CenturyTel declined to hire Michael Van Wies, he began repeatedly complaining about CenturyTel services.

³² *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 13.

³³ *Response of Michael Van Wies to Request for Discovery from CenturyTel*, June 12, 2002, p. 3.

³⁴ Letter from Ross Booher to Michael Van Wies, June 14, 2002, p. 3.

³⁵ Letter from Michael Van Wies to Hearing Officer and Executive Secretary, June 23, 2002, p. 1.

³⁶ *Complaint*, p. 2.

³⁷ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, p. 14.

(4) Michael Van Wies has communicated that his motive in bringing this Petition is to inflict costs on CenturyTel, or words to that effect.

(5) Michael Van Wies has communicated that if CenturyTel is unwilling to hire him, CenturyTel will regret it, or words to that effect.

(6) Michael Van Wies has communicated complaints against other companies that have declined to hire him.

(7) Michael Van Wies has, within the last 18 months, complained of problems with Comcast Cable Modem service.

(8) Michael Van Wies has claimed to represent one or more persons in the past without their knowledge or consent.

(9) Michael Van Wies does not intend to pursue in this proceeding the claims set forth in Paragraphs 3, 4, 5, 7 and 8 of CenturyTel's Motion to Dismiss.

(10) Michael Van Wies does not intend to pursue in this proceeding the claims set forth in Paragraphs 1 and 2 of CenturyTel's Motion to Dismiss.

[11] Michael Van Wies does not intend to pursue in this proceeding the claims set forth in Paragraph 6 of CenturyTel's Motion to Dismiss.³⁸

With respect to requests 3 through 8, it is difficult to see how Mr. Van Wies can do anything more than simply admit or deny. If he has not done these things, there are no more facts and circumstances to discuss. With respect to requests 9 through 11, a simple denial also appears sufficient. Mr. Van Wies's letter of June 23, 2002 explains that he is dismissing all claims other than No. 6. The Hearing Officer fails to see why CenturyTel needs to know Mr. Van Wies's reasons for dropping his other claims.

The Hearing Officer grants in part and denies in part CenturyTel's *Motion*. CenturyTel's request for attorney's fees and other sanctions against Mr. Van Wies is denied. Mr. Van Wies has not always responded to discovery requests in a very straightforward or expansive manner; however, except in the specific instances stated above, CenturyTel will not be unduly prejudiced by various minor insufficiencies in Mr. Van Wies's responses. As explained further below, the

³⁸ *Request for Discovery from CenturyTel to Michael Van Wies*, May 24, 2002, pp. 14-16.

most appropriate way to address these insufficiencies, at this point, is to limit the scope of evidence admissible at the Hearing. The Hearing Officer also finds that CenturyTel's discovery requests to Mr. Van Wies contain several requests that seek irrelevant information and are therefore inappropriate.

Mr. Van Wies's Motion

Mr. Van Wies's *Motion* is contained in a letter filed with the Authority on July 8, 2002. Mr. Van Wies again requests that CenturyTel produce the information requested in his March 1, 2002 request for discovery. Apparently, this is the information CenturyTel stated in its May 28, 2002 *Response* was "automatically purged." The Hearing Officer finds that this discovery dispute can be resolved at a Hearing on the merits of the *Complaint*. At the Hearing, Mr. Van Wies shall explain the importance of this information and how he has been harmed by CenturyTel's not having retained or produced it. CenturyTel shall explain why this information was not retained or produced.

Mr. Van Wies's *Motion* also contains several interrogatories and requests for admission. These discovery requests, which are made for the first time in his *Motion*, are disallowed because they were filed long after the deadline for discovery requests.

Guidelines for a Hearing on the Merits

Mr. Van Wies's decision to limit his *Complaint* greatly simplifies this case and narrows the scope of essential evidence. Upon review of the parties' filings related to discovery, the Hearing Officer is concerned that the Authority's consideration of this matter may have been unnecessarily delayed, not helped, by discovery. The Hearing Officer finds that further discovery requests, responses, and disputes are not needed or justified at this point and that the case may proceed to a Hearing.

The Hearing Officer determines that a Hearing shall be held as soon as possible to bring this case to a resolution. The Hearing, including the testimony of all witnesses, shall be strictly

limited to two (2) areas. The first is claim No. 6 as stated at page 2 of the *Complaint* and quoted on page 5 of CenturyTel's *Motion to Dismiss*:

Also the reason for getting the FX line in a residence is that CenturyTel does not have enough trunks. Certain times of the day and on weekends you can't even complete calls into the City of Chattanooga Tandem. So we bear an additional expense, and let CenturyTel control my family's local and long distance calling pattern. So now we by-pass their local DMS-100 switch, and get BellSouth dial tone in my home. We call when and where we want to without interference.³⁹

The second area is any discovery disputes related to claim number 6.

At the Hearing, Mr. Van Wies may call John Russell as an expert witness, provided that Mr. Van Wies responds to CenturyTel's Interrogatory No. 7 as set forth above. Mr. Russell must be prepared to testify as to his expertise. Mr. Van Wies may also call any of the persons listed in his June 12, 2002 *Response* as having experienced similar problems with CenturyTel. Mr. Van Wies should present testimony to demonstrate how he has been adversely affected by CenturyTel's not having retained and produced the data he requested and which CenturyTel states was "automatically purged."

Mr. Van Wies should be aware that, at least on its face, CenturyTel's defense to his original request for relief has merit. Mr. Van Wies requested in his *Complaint* that the Authority revoke CenturyTel's CCN. In its *Motion to Dismiss*, CenturyTel stated:

TRA regulations provide appropriate avenues for customer complaints about service quality, but no where do they authorize the revocation of a telephone company's Certificate for the reasons outlined by the Petitioner.⁴⁰

CenturyTel further states:

Petitioner's filing fails to set forth a claim upon which relief may be granted even if it were interpreted as a request CenturyTel's to abandon its Certificate to another telecommunications provider. [sic] See *Complaint*, p. 3, ¶ 4. CenturyTel is barred in this case as a matter of law from abandoning its Certificate since it is a provider with carrier of last resort obligations. TRA Rule § 1220-4-8-.05(1); T.C.A. § 65-4-201(c). Nor can Petitioner's filing be construed

³⁹ *Motion to Dismiss*, February 22, 2002, p. 5.

⁴⁰ *Id.*

as a request to transfer CenturyTel's Certificate. TRA rules require that a Certificate may only be transferred to another provider who meets the requirements of T.C.A. § 65-4-201(c). TRA Rule § 1220-4-8-.05(2). That statute requires a telecommunications provider to demonstrate that it has the financial, managerial, and technical wherewithal to provide the applied for service before it may receive a Certificate. T.C.A. § 65-4-201(c). Neither BellSouth nor Sprint nor any other eligible telecommunications company is a party to this case or is applying to receive the respondent's Certificate.⁴¹

The Hearing Officer finds this argument to be essentially correct, although not necessarily based on the legal authority cited. Suffice it to say that CenturyTel has a right, granted by the State of Tennessee pursuant to Tenn. Code Ann. § 65-4-201, to provide service in its service area. CenturyTel also has a duty to provide service in its service area, and it may not abandon its service area without the Authority's approval.⁴²

Nevertheless, a pleading should be read in terms of the alleged facts and not limited to the requested relief.⁴³ Further, it is appropriate to afford some leeway in construing a pleading by a party acting pro se.⁴⁴ At the beginning of the Hearing, Mr. Van Wies should be prepared to state the relief he requests from the Authority, bearing in mind that it is extremely unlikely that the Authority would revoke CenturyTel's CCN.

CenturyTel may call such witnesses as are reasonably necessary to explain CenturyTel's not having retained and produced the Third Quarter data for 2001 and to address Mr. Van Wies's allegations in claim number 6.

No further discovery requests or objections will be permitted. Should either party choose to supplement its discovery responses prior to the Hearing, the supplemental responses shall be served upon the opposing party and filed with the Authority no later than fifteen (15) days from

⁴¹ *Id.*, pp. 8-9

⁴² See 64 AM. JUR. 2D *Public Utilities* § 75 (2nd ed. 1972):

⁴³ See 61A AM. JUR. 2D *Pleading* § 130 (2nd ed 1999); *Adams v. Carter County Memorial Hospital*, 548 S.W. 2d 307, 309 (Tenn. 1977); *Hull v. Evans*, 439 S.W.2d 110, 114 (Tenn. App. 1968).

⁴⁴ See *Winchester v. Little*, 996 S.W.2d 818, 824 (Tenn. App. 1998).

the date of this Order.

Mr. Van Wies and the Authority shall treat as confidential any documents produced by CenturyTel which CenturyTel reasonably claims, subject to review by the Hearing Officer, should be so treated. Mr. Van Wies and the employees of the Authority shall not disclose this information or discuss this information outside of the Hearing.⁴⁵

All other claims in the *Complaint* are dismissed without prejudice. The Hearing Officer cautions Mr. Van Wies that should he ever choose to renew the other claims in his *Complaint*, he should not do so for the purpose of harassing CenturyTel, but should make a good faith attempt to show a connection between some inadequacy in CenturyTel's service, how such inadequacy has adversely affected him, and some feasible relief that the Authority can grant.

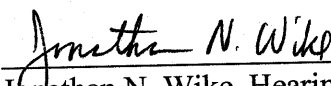
The Hearing Officer proposes that the Hearing take place in January 2003. Upon receipt of this Order, each party should advise the Hearing Officer, by fax, of the party's availability for a Hearing during that period. The Hearing Officer will then set the Hearing for a date in that period and notify both parties of the Hearing date. The Hearing is not expected to last more than one day. The fax number is 615-741-5015.

IT IS THEREFORE ORDERED THAT:

1. CenturyTel's *Motion to Compel* is granted in part and denied in part, as set forth in this Order.
2. Mr. Van Wies's *Motion to Compel* is granted in part and denied in part, as set forth in this Order.
3. Based upon the filings and representations of the parties, this matter will proceed to Hearing only on Claim No. 6 of Mr. Van Wies's *Complaint*.

⁴⁵ On May 23, 2002, CenturyTel submitted a proposed Protective Order, which Mr. Van Wies refused to sign. See Letter from Michael Van Wies to Hearing Officer dated May 26, 2002. If CenturyTel produces additional documents which it requests be treated as confidential, CenturyTel may again submit a Protective Order. Subject to approval, the Hearing Officer will sign the proposed Protective Order, and it shall be binding upon both parties.

4. This matter will be set for Hearing by a separate notice.


Jonathan N. Wike, Hearing Officer